



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** October 29, 2013

Approved

Date

11/7/13

**COUNCIL DISTRICT: 3**

**SUBJECT: CP13-037. APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT RENEWAL TO ALLOW CONTINUED USE OF A PUBLIC DRINKING ESTABLISHMENT WITH LATE NIGHT USE UNTIL 2:00 A.M., ON A 0.52 GROSS ACRE SITE LOCATED ON SOUTHWEST CORNER OF SOUTH 1ST STREET AND WILLOW STREET (1009 SOUTH 1<sup>ST</sup> STREET)**

## **RECOMMENDATION**

The Director of Planning, Building and Code Enforcement recommends that the City Council deny the appeal and uphold the Planning Commission's decision to approve the subject Conditional Use Permit.

## **OUTCOME**

Should the City Council uphold the Planning Commission's decision, the existing public drinking establishment (Club Caribe) with late night use until 2:00 a.m. will continue to operate at the subject location.

## **EXECUTIVE SUMMARY**

The Planning Commission approved a renewal of a Conditional Use Permit (CUP) allowing for the continued use of a public drinking establishment with late night use until 2:00 a.m. at 1009 South 1<sup>st</sup> Street (Club Caribe). This CUP has been appealed to the City Council for consideration *de novo*. This memorandum provides a summary of the Planning Commission's hearing and decision as well as facts and analysis related to the permit renewal application and appeal that the Council may want to consider in making its decision.

## **BACKGROUND**

### **Planning Commission Hearing and Action**

On August 14, 2013, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (File No. CP13-037). This hearing was a continuation of the Planning Commission hearing conducted on July 10, 2013. In accordance with the Planning Commission's direction at the July 10, 2013 hearing, additional notification in Spanish was mailed to the neighborhood for the subsequent hearing. The Director of Planning recommended approval of the Conditional Use Permit renewal request to allow the continued operation of the public drinking establishment with late night use.

Staff stated that the applicant has submitted a statement (attached) addressing the concerns raised at the previous hearing regarding food trucks stationed along the public sidewalk past midnight, loitering, parking issues, noise and security issues, especially on Fridays and Saturdays. Staff noted that a new condition has been added to the draft Resolution requiring a Covenant of Easement for ingress, egress, and emergency vehicle access between the subject parcel and the immediately adjoining parcel, presently owned by the same property owner, to provide shared access and use of additional parking spaces.

Commissioner O' Halloran questioned staff regarding the significance of the easement. Staff responded that the subject site with 30 parking spaces and the adjoining parcel with 18 spaces fulfill the minimum parking requirements for the establishment.

**Public Testimony:** Peggy McLaughlin, representing Club Caribe, mentioned that the subject application was a renewal request, originally issued in 1986, and has been subsequently renewed by the applicant every five years. She noted that Club Caribe, a successful family-owned business, has thrived at the subject location for 27 years. She reiterated that the subject establishment was in conformance with the Envision 2040 General Plan, and in full compliance with the Conditional Use Permit, Public Entertainment Permit and Alcohol Beverage Control license. She noted that the subject establishment was fully supported by the surrounding Washington Neighborhood residents, and it furthered the key land use policy to retain commercial land for jobs and entertainment. Therefore, Club Caribe is an asset to the neighborhood and it is not associated with any of the food (taco) trucks that were routinely seen parked on 1<sup>st</sup> Street. The complaints made by a neighboring resident, Keith Bohren, now the appellant, regarding late night disturbances, noise, litter, and parking within the neighborhood is not conclusively substantiated as resulting from Club Caribe's operation. She forwarded neighbor support and merchant support statements to the Planning Commission, and stated that Club Caribe is in agreement with all of the conditions that are being proposed including the new condition on the covenant of easement for parking and mutual access.

Sandra Escobar, from Escobar Legacy Consulting, stated that she had reached out to the community and made attempts to contact the complainant, Keith Bohren, but he was unavailable and not open to any communication with the applicant who had earlier extended an invitation for a good-neighbor meeting. The applicant subsequently conducted a community meeting where over 50 residents attended. Ms. Escobar stated that she had extended an invitation to the Planning Commission for a field visit which was accepted by Commissioners Kamkar and

Cahan. She requested that the Planning Commission support the renewal as she had witnessed the subject establishment grow over the last fifteen years.

Commissioner Bit-Badal inquired if the community outreach included residents within a 500 foot radius. Ms. Escobar mentioned that the attendees included neighbors from the immediate impacted area, essentially within walking distance. The remainder of the attendees was staff and business owners. She clarified that the flyer was bi-lingual and that she had personally met the complainant and extended an offer for mediation.

In response to Commissioner Bit-Badal's comments about the use of mechanized cleaning equipment, Ms. Escobar further clarified that power washing will erode the faux brick veneer and, therefore, the applicant has utilized sweeping and damp washing regularly. She further stated that the taco trucks do not belong to the establishment and are not a part of this project. She added that the applicant fully intends to comply with the condition that food be available at all times during operation.

Mr. Bohren commented that approximately 200-400 people visit the club and as adequate parking is not available to accommodate that capacity, club patrons park on the surrounding neighborhood streets. He stated that the noticing radius should have been extended to 1000 feet to include the entire impacted neighborhood. He was very concerned that he was subjected to intimidation following his complaints about the business. He also noted that his house was burglarized and front lawn vandalized, coincidentally soon after the first hearing date. He stated that his calls to Code Enforcement were not addressed, although the Police Department did respond to his request following the burglary.

Another resident and activist from the neighborhood mentioned that the neighbors were not willing to attend the hearing owing to fear of possible repercussions. They are concerned about the "illegal activities" being conducted on 1<sup>st</sup> Street and, therefore, they would not support use of alcoholic beverages within a family-oriented neighborhood.

Mr. Mark Lopez, an activist and resident of the Guadalupe Washington Neighborhood, stated that the subject establishment was always supportive of and sponsored community events. Another resident, Mr. Omar Torres, stated that in the absence of the subject establishment, the 1<sup>st</sup> Street corridor would have resulted in increased illegal activities, and, therefore, the renewal of the subject permit must be supported. Nine other neighbors, employees and adjacent business owners spoke in support of the project and stated that it is a family-run business within a secure and clean environment with no prior Code Enforcement complaints. The security personnel representing Club Caribe stated that since the previous Planning Commission hearing, there has been a 30% increase in security staff and female staff has also been hired. Typically, eight security guards are posted outside and seven are within the subject establishment.

Planning staff stated the General Plan designation for the subject site, Mixed-Use Commercial, and the Commercial Pedestrian Zoning designation both emphasize commercial uses, with secondary residential uses. Staff from the San Jose Police Department stated that the subject establishment has been a responsible business and is in compliance with the Public Entertainment Permit. The enforcement complaints received from the community over the last year and a half were minor in nature. Police Department staff further noted the closing

procedures at Club Caribe are very detailed and the applicant is very responsive to feedback.

Planning Commission Discussion: Commissioner Kamkar stated he would be concerned if there was even a hint of intimidation from the subject establishment to the neighborhood, but the subject establishment has addressed the concerns including the food requirement expressed at the previous Planning Commission hearing of July 10, 2013.

Commissioner Cahan mentioned that bilingual mailing notification proved beneficial as it benefited the Spanish (non-English) speakers within the community.

Commissioner Yob inquired if the second mailing was paid for by the applicant. Staff mentioned that it was paid for by the Planning Division. She made a motion to approve the Conditional Use Permit as recommended by staff. She encouraged the community to report any kind of threats, concerns, complaints, intimidation, or violence of any kind to the Police Department to create a safe community, and she requested they voice any concerns or complaints that they may have regarding the operation of this business and its compliance.

Commissioner Bit-Badal seconded the motion. She thanked the Police Department for their positive statement and attributed the increased attendance at the Planning Commission hearing to the bilingual hearing notification. She was concerned about the inconsistencies of the applicant's testimony at the previous Planning Commission hearing which were reconciled at this hearing. Therefore, she would support this motion.

Commissioner O' Halloran stated that the project has shown improvement owing to the postponement of the previous hearing and the improved public outreach. He too supported this motion.

The Planning Commission then voted 7-0-0 on a motion to approve the Conditional Use Permit.

### Appeal

On August 26, 2013, an appeal was filed by a resident, Keith Bohren, stating that the renewal would adversely impact the neighborhood. (See attached Notice of Permit Appeal).

### ANALYSIS

The original staff report (attached) provides a full analysis of this project with respect to the Zoning Ordinance findings required to approve the subject Conditional Use Permit.

The following is an analysis of the issues raised by the applicant/appellant as generally stated in his appeal of the Planning Commission's decision:

1. Allegation: Hearing Notice not provided to directly affected property owners and residents.

*Response and Analysis: The notice for this project is in conformance with the City Council Policy 6-30: Public Outreach. The notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site, as is required for standard size projects. On-site notification was provided at the subject location. In addition, bilingual notification in Spanish and English was mailed for the second Planning Commission hearing.*

2. Allegation: Facts do not support findings.

*Response and Analysis: The facts and analysis supporting the Conditional Use Permit findings required for Permit renewal are set forth in the attached staff report to the Planning Commission as well as the Planning Commission Resolution also attached hereto, and are summarized as follows:*

*This project proposes continuation of an existing public drinking establishment with late night use until 2:00 a.m. daily. The proposed use is consistent with those intended under the Mixed Use Commercial Land Use designation and furthers the General Plan's key policies by promoting a mix of uses and attracting visitors to the neighborhood. The subject site is located within the CP Commercial Pedestrian Zoning District and requires a Conditional Use Permit for a drinking establishment and late night use. The proposed use conforms to City Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars as well as the City Council Policy 6-27, Evaluation for 24-Hour Uses.*

3. Allegation: Granting of Conditional Use Permit is contrary to City Planning decisions.

*Response and Analysis: The subject Conditional Use Permit is consistent with the Envision San Jose 2040 General Plan in that the proposed use is consistent with those intended under the Mixed Use Commercial Land Use designation. This designation accommodates a mix of commercial and residential uses with an emphasis on commercial activity as the primary use and residential activity allowed in a secondary role.*

4. Granting of Conditional Use Permit is inconsistent with a pedestrian zoning.

*Analysis: The subject site is located within the CP Commercial Pedestrian Zoning District, which allows a variety of commercial uses including public drinking establishments as a conditional use. The subject establishment is located among other office, residential, and commercial retail uses.*

5. Allegation: Granting of Conditional Use Permit adversely affects the peace, health, safety and morals, and welfare of persons residing in the surrounding area / Granting of Conditional Use Permit affects the public health, safety, and/or general welfare of persons residing in the surrounding area.

*Response and Analysis: The establishment has been in operation since 1986 in the same location with a conditional use permit renewed every five years. In regard to the proposed Conditional Use Permit, the Police Department is neutral to the renewal request and has provided crime statistics (attached), listing a total of ten counts during the period between September 2012 and*

*September 2013. Additional testimony was provided by Police Department Staff at the Planning Commission Hearing that stated that the applicant has been a responsible business owner and that only minor enforcement complaints were received within the last 18 months.*

6. Allegation: Granting of Conditional Use Permit impairs the utility and/or value of other property located in the vicinity.

*Response and Analysis: A mix of office, public eating establishments, retail and residential uses surround the nightclub use. These include the Bank of the West to the east across South 1<sup>st</sup> Street; retail and café uses to the north across Willow Street; office and residential uses to the east; and retail and office uses to the south. Future mixed-use development projects are also approved along First Street.*

7. Allegation: There is inadequate parking in the surrounding residential neighborhood to support the 432 cars/attendees to this business each night.

*Response and Analysis: The project meets the required number of parking spaces, in accordance with the Zoning Code. The subject site is currently provided with 30 parking spaces. The adjoining parcel, also owned by the property owner of the subject parcel, is provided with 18 parking spaces. A shared parking arrangement with the adjoining parcel is in place. A condition of approval would require the subject property owner to record a Covenant of Easement with the City of San Jose for ingress/egress, parking and emergency vehicle access between the subject parcel and the abutting parcel immediately to the south of the subject parcel.*

### **Conclusion**

Based on the above analysis and the analysis contained in the attached Staff Report to the Planning Commission, staff concludes that all the required findings can be made to allow the continued operation of the subject establishment. Therefore, staff recommends that the City Council deny the appeal and uphold the Planning Commission's decision to allow the renewal of the drinking establishment (Club Caribe) with late night use until 2:00 a.m. in accordance with the facts, findings and conditions discussed in this memorandum, the Staff Report to the Planning Commission, and the Planning Commission resolution.

### **EVALUATION AND FOLLOW-UP**

The City Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to approve the project to allow continued use of the subject establishment; or
2. Deny the renewal request as suggested by the appellant; or
3. Since this is a *de novo* hearing, the City Council may reconsider other aspects of the original approval including the appropriateness of the conditions or make other modifications to any permit conditions including those not specifically discussed in this report.

**PUBLIC OUTREACH**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site. This memorandum and the staff report to the Planning Commission are posted on the City's website. Staff has been available to discuss the proposal with members of the public.

**COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

**CEQA**

Exempt

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Salifu Yakubu, Division Manager, at 408-535-7911.

Attachments: Applicant's Statement  
Notice of Permit Appeal  
Planning Commission Staff Report and Attachments  
Police Department Calls for Service



Noonan E. Matteoni  
Debra M. O'Laughlin  
Bradley M. Matteoni  
Barton G. Hechtman  
Cory Hechtman

October 24, 2013

Mayor Reed and Honorable Members of the City Council  
City of San Jose  
San Jose City Hall  
200 East Santa Clara Street  
San Jose, CA 95113

**Re: Opposition to Appeal of Planning Commission's Approval  
of Club Caribe's Application for Renewal of Conditional Use  
Permit**

**File No. CP13-037**

**City Council Hearing: November 19, 2013**

Dear Mayor Reed and Honorable Members of the City Council:

The owner of Club Caribe respectfully requests that the City Council uphold the Planning Commission's unanimous approval of the Club's use permit renewal and deny the appeal of that approval.

Club Caribe, located on the corner of Willow and South First Streets, has had a long and successful history as an entertainment-night club offering live regional, Mexican music, Latin American music, and dancing. The Club is an active and involved member of the Washington neighborhood where it is located. Club Caribe has thrived in downtown San Jose for 27 years where many other businesses have struggled and sometimes failed.

In 1986, Ari Avanesian, the owner of La Cumbre Enterprise, dba Club Caribe, and his wife Sandra Avanesian were granted a conditional use permit for Club Caribe described as a public drinking establishment with late night hours until 2:00 a.m. Every five years



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San Jose, CA 95126  
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fax. 408.293.4004  
www.matteoni.com

since then, the Avaneassians have come before the City of San Jose to renew the Club's conditional use permit and the City has approved every renewal request.

It is important to note that Club Caribe's owner is not proposing any changes in the Club's use or to the exterior facade of this historic 1891 building. The owner simply wishes to continue operating Club Caribe as he has successfully done for the past twenty-seven years.

As to the appeal of Mr. Keith Bohren, there are simply no facts to support it. He complains of various problems in the neighborhood (e.g., litter, parking, vandalism, noise from taco trucks, public drunkenness) and points to Club Caribe as the source of all these problems. But, he presented no evidence that linked these unfortunate, neighborhood problems to Club Caribe's operation. The testimony of the neighbors and of staff shows in fact that Club Caribe is an asset to the neighborhood and operates in full compliance with all relevant City and State regulations, permits and licenses.

**1. Compliance with the City's General Plan and Goals and Policies**

The requested renewal of the conditional use permit is consistent with the Envision San Jose 2040 General Plan's Mixed Use/Commercial designation. Drinking establishments are intended uses under this designation and commercial activity is intended to be the primary use and residential activity allowed in a secondary role. The Club furthers General Plan policy LU-4.1 "to retain existing commercial lands to provide jobs, goods, services, entertainment and other amenities for San Jose's workers, residents, and visitors."

**2. Compliance with its Conditional Use Permit and Entertainment Permit**

Club Caribe is in full compliance with its Conditional Use Permit.

Also, the Club is in compliance with its Entertainment Permit and there have been no complaints from the Police Department regarding the Club's operation. According to the staff report, the Police Department is neutral to the renewal of the use permit. Sergeant Trayer of the Vice Unit of San Jose Police Department, who responded to questions of the Commissioners at the August 14 Commission hearing, said that in his years on patrol in the Washington neighborhood and in the Vice department, he has had "very positive experiences with Club Caribe," and that the owner, Mr. Avaneassian, is a responsible business owner who promptly responds to any department issues concerning the Club. Sergeant Trayer told the Commission he has heard no complaints, formal or otherwise, from the Police Patrols concerning

Club Caribe, and from the neighborhood over the many years, only "very minor complaints."

According to staff, Code Enforcement has no record of any neighbor complaints against Club Caribe.

### **3. Neighborhood Support**

Club Caribe could not have successfully operated in the Washington neighborhood for the past twenty-seven years without the support of the neighborhood and community. Petitions from the surrounding merchants and neighbors in support of Club Caribe's continued operation in the Washington neighborhood were submitted to the Planning Commission. Many neighbors personally appeared at the Planning Commission Hearing to show their support of Club Caribe, including the residents living in the apartment building next to the Club's parking lot. Two speakers in particular, Omar Torres and Mark Lopez who are committed to the well-being of the Washington neighborhood, spoke of the Club's positive influence in the neighborhood and its support and contribution to various community and school fund raisers, and sponsorship of community events. They view Club Caribe as a neighbor and a good one.

Mr. Avanesian has extensive experience in operating a nightclub and entertainment venue and does so responsibly and in full compliance with all of its City and State permits and licenses. Reference letters concerning Mr. Avanesian's entertainment-business experience from Team San Jose, Santa Clara County Fairgrounds Management Corporation, KRTY Ltd. and Empire Broadcasting, and KRZZ 93.3 FM were provided to the Planning Commission and are part of the administrative record. Team San Jose, the operator of the San Jose Convention Center speaks to La Cumbre's commitment to professional event management and strict code of ethics in its successful promotion and presentation of large dances at the Convention Center over the last 20 years.

### **4. The Appeal Has No Merit**

The appellant, Mr. Bohren, who purchased his house on S. Second Street within the past few years, voiced numerous complaints at the Planning Commission hearing concerning late night disturbances involving rowdy, drunk people, vandalism, the presence and noise from a taco truck along South First Street and litter and street parking problems.

Mr. Bohren has singled out Club Caribe as the cause for all of these disturbances. It

is Club Caribe's position that the problems Mr. Bohner complains of are a result of where his house is located. His house is located in a primarily commercial area of Second Street and is adjacent to South First Street, a major transportation and commercial corridor. The adjoining Washington neighborhood is a vibrant one and it is close to the City of San Jose's downtown entertainment district. The result is that on Friday and Saturday nights, in the late night hours, numerous people are traveling up and down South First Street, and in and around this neighborhood, going to and from various clubs, parties and venues and unfortunately creating at times nighttime noise and disturbances.

Club Caribe is not the cause of the problems to which Mr. Bohren complains. The record from the Planning Commission hearings show that Club Caribe is not a disruptive force in the neighborhood. Club Caribe has been a model nightclub and has not had any disciplinary actions filed against it by the City of San Jose, its Police and Fire Departments, the Santa Clara County Department of Health, and California Alcohol Beverage Control Board.

#### CONCLUSION

There is no basis to support this appeal which seeks to deny the permit renewal and shut the doors of this successful entertainment Club. The Avaneessians respectfully request that the City Council deny the appeal and uphold the Planning Commission's approval of the renewal of Club Caribe's conditional use permit.

Sincerely,



PEGGY M. O'LAUGHLIN  
Attorney for Club Caribe

PMO/jm

cc: Ari and Sandra Avaneessian

## NOTICE OF PERMIT APPEAL

### TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER <b>CP 13-037</b>	RECEIPT # <b>724276</b>
PROJECT LOCATION <b>1009 So. 1st St.</b>	AMOUNT <b>\$100</b>
	DATE _____
	BY _____

### TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:

**1009 So 1st St., San Jose**

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):

### PERSON FILING APPEAL

NAME <b>Keith Bohner</b>	DAYTIME TELEPHONE <del>(408) 586-7453</del>
ADDRESS <del>1009 So 1st St</del>	CITY <del>San Jose</del>
	STATE <del>CA</del>
SIGNATURE <b>Keith Bohner</b>	ZIP CODE <del>95113</del>
	DATE <b>8/26/13</b>
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet)	

### CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME			
ADDRESS		CITY	STATE
			ZIP CODE
DAYTIME TELEPHONE ( )	FAX NUMBER ( )	E-MAIL ADDRESS	

### PROPERTY OWNER

NAME <b>Keith Bohner</b>	DATE <b>8/26/13</b>
ADDRESS <del>1009 So 1st St</del>	CITY <del>San Jose</del>
	STATE <del>CA</del>
	ZIP CODE <del>95113</del>

PLEASE CALL THE APPLICANTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Basis for Appeal

Including but limited to :

De Novo Hearing before the

San Jose City Council

1. Hearing Notice not provided to directly affected property owners and residents.
2. Facts do not support findings.
3. Granting of Conditional Use Permit is contrary to City Planning decisions.
4. Granting of Conditional Use Permit is inconsistent with a pedestrian zoning.
5. Granting of Conditional Use Permit Adversely affects the peace, health, safety and morals or welfare of persons residing in the surrounding area.
6. Granting of the Conditional Use Permit Impairs the utility and/or value of other property located in the vicinity.
7. Granting of Conditional Use Permit Adversely affects the public health, safety and /or general welfare of persons residing in the surrounding area.
8. There is inadequate parking in the surrounding residential neighborhood to support the 432 cars/attendee's to this business each night.
9. On such other grounds as will be briefed in the supplemental brief and/or considered by the City Council before or during the hearing.

RESPECTFULLY SUBMITTED

Keith Bohren

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NO.:** CP13-037

**Submitted:** March 18, 2013

**PROJECT DESCRIPTION:**

A Conditional Use Permit for renewal to allow continued use of a public drinking establishment with late night use until 2:00 a.m., on a 0.52 gross acre site.

Zoning	CP Commercial Pedestrian
General Plan	Mixed Use Commercial
Council District	3
Annexation Date	March 27, 1850 (Original City)
Historic Resource	No
Specific Plan	NA

**LOCATION:**

Southwest corner of South 1st Street and Willow Street (1009 South 1<sup>st</sup> Street)

**AERIAL MAP**



# GENERAL PLAN



# ZONING



## **RECOMMENDATION**

Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit on the subject site for the following reasons:

1. The subject Conditional Use Permit is consistent with the Envision San Jose 2040 General Plan and its goals and policies, specifically:
  - a. The use is consistent with the site's Land Use/ Transportation Diagram designation of Mixed Use Commercial in that commercial uses, such as drinking establishments, are intended uses under this designation.
  - b. The project furthers key General Plan policies by promoting a mix of uses and attracting visitors to the neighborhood.
2. The project conforms to City Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars.
3. The project conforms to City Council Policy 6-27, Evaluation of 24-Hour Uses.

## **BACKGROUND & DESCRIPTION**

On June 6, 2013, the applicant, Sandra G Avanesian of Club Caribe, filed a Conditional Use Permit (CUP) renewal application for an existing public drinking establishment with late night use until 2:00 a.m. daily. The subject site is located within the CP Commercial Pedestrian Zoning District. The Zoning Ordinance requires a Conditional Use Permit for a drinking establishment and late night use.

On June 25, 2008, the Planning Commission approved a Conditional Use Permit Amendment (File No. CPA02-001-01) that allowed continued operation of a public drinking establishment, with late night use until 2:00 a.m., seven days a week. The Amendment to renew previously approved Conditional Use Permit (CP02-001) was approved for a term of five years and set to expire on June 25, 2013. The Club Caribe originally opened for business in 1986 and was granted a Conditional Use Permit for a public drinking establishment with late night hours until 2:00 a.m. On March 18, 2013, the applicant submitted a Conditional Use Permit application (renewal) to continue the existing drinking establishment and late night use. The permit provided an opportunity for the filing of a timely renewal which, as defined by the Zoning Ordinance, should occur more than 90 days and no greater than 180 days prior to the date of expiration. In this instance, the applicant filed the Conditional Use Permit within the appropriate window of time to be considered a timely renewal. The proposed Conditional Use Permit (File No. CP13-037) will allow for the continued operation of the public drinking establishment with late night use, as previously permitted through the previous permit. The applicant is not proposing any changes to the previously approved Conditional Use Permit.

### **Site and Surrounding Uses**

The subject site is located on the corner of Willow and South First Streets. The existing 5,400 square foot establishment, Club Caribe, offers full bar, live music and dancing. It includes a surface parking lot that consists of 44 spaces situated around the building to the rear and side.

A mix of office, public eating establishments, retail and residential uses surround the nightclub use. These include the Bank of the West to the east across South 1<sup>st</sup> Street; retail and café uses to the north across Willow Street, office and residential uses to the east; and retail and office uses to the south.

This Conditional Use Permit project proposes to allow the continued operation of the existing nightclub, Club Caribe, typically operating between the hours of 8:00 p.m. to 2:00 a.m., seven days per week even as the permitted hours of operation are from 6:00 a.m. until 2:00 a.m. The subject establishment is subject to a separate Entertainment Permit administered by the Police Department.

## **ANALYSIS**

The proposed rezoning was analyzed with respect to: 1) conformance with the Envision San Jose 2040 General Plan, 2) conformance with City Council Policy 6-27 for the Evaluation of 24-Hour Uses, 3) conformance with City Council Policy 6-23, Guidelines for the Evaluation of Nightclubs and Bars, and 4) conformance with the California Environmental Quality Act.

### **San Jose 2040 General Plan Conformance**

The subject site is designated Mixed Use Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity as the primary use and residential activity allowed in a secondary role. Additionally, it furthers key policy LU-4.1 to retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San José's workers, residents, and visitors. The proposed project maintains an existing public drinking establishment and provides enhanced services to the surrounding neighborhoods.

### **City Council Policy 6-27: Evaluation of 24-Hour Uses**

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs and bars, the Policy states that uses under this category should conform to the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars, and that if they do, then they are in conformance with Council Policy 6-27. See the discussion below on conformance with Council Policy 6-23.

### **City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars**

The City Council Policy on Guidelines for Evaluation of Nightclubs and Bars, is intended to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval. The applicable project characteristics required by the policy are inserted in *italics* below. The land use consideration for this permit is the drinking establishment use and the 24-hour operation (late night use after midnight).

1. The most appropriate General Plan Land Use Designation for nightclubs and bars is a Commercial designation (except for Office) including Neighborhood/Community Commercial.

*The subject site is located within the CP Commercial Pedestrian Zoning District. This project proposes continuation of an existing public drinking establishment with late night use until 2:00 a.m. daily. It is adjacent to office, commercial and residential uses. A mix of commercial office, public drinking establishments, and entertainment uses surround the restaurant use.*

2. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications or controls or procedures to increase effective law enforcement.

*The Police Department provided crime statistics in regards to the proposed Conditional Use Permit. The Police Department is neutral to the renewal request and has no further comments. In addition, the draft Resolution contains a condition that requires uniformed security guards to monitor the nightclub activities until 2:00 a.m.*

3. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day.

*The draft Resolution contains a condition that requires the operator of the proposed use to clean the public right-of-way immediately adjacent to the subject site before 8:00 a.m. each day.*

4. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean up occurs within 500 feet of existing residential uses.

*The draft Resolution prohibits the use of mechanical equipment for outside maintenance from 10:00 p.m. to 6:00 a.m. daily adjacent to adjacent residential uses.*

5. Amplified sound, amusement games, and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.

*The draft Resolution contains a condition prohibiting activities involving amplified sound after 1:30 a.m. In addition, the applicant must apply to the Police Department for an Entertainment Permit and any other requisite permits or licenses.*

### **California Environmental Quality Act (CEQA)**


Under the provisions of Section 15301 (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that no expansion of the existing use is proposed.

### **CONCLUSION**

The subject Conditional Use Permit is consistent with the Envision San Jose 2040 General Plan in that the proposed use is consistent with those intended under the Mixed Use Commercial Land Use designation and furthers the General Plan's key policies by promoting a mix of uses and attracting visitors to the neighborhood. The use conforms to City Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars as well as the City Council Policy 6-27, Evaluation for 24-Hour Uses as discussed above. The proposal renews an existing Conditional Use Permit for a business that has operated successfully for several years. The Police Department has indicated that they are neutral about this proposal. For these reasons, staff recommends that the Planning Commission approve the subject Conditional Use Permit (File No. CP13-037) for the continued operation of the public drinking establishment with late night use until 2:00 a.m.

**PUBLIC OUTREACH/INTEREST**

The property owners and occupants within a 500-foot radius were sent public hearing notices for the Planning Commission hearing. This staff report has been posted on the City's web site. Staff has been available to discuss the proposal with interested members of the public.

**Project Manager:** Aparna Ankola **Approved by:**  **Date:** 7/3/13

<b><u>Owner/Applicant:</u></b>	<b><u>Attachments:</u></b>
<b><u>Owner:</u></b> Sandra G. Avanesian P.O Box 197 Alamo, CA. 94507  <b><u>Applicant:</u></b> Ari Avanesian Club Caribe 1025 South 1 <sup>st</sup> Street San Jose, CA. 95110	Draft Resolution Police Memorandum Floor Plan

## **RESOLUTION NO. 13-**

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit for a renewal of a previously approved Conditional Use Permit Amendment (File No.CPA02-001-01) to allow continued use of a public drinking establishment with late night use until 2:00 a.m. on a 0.52 gross acre site, located on the southwest corner of South 1st Street and Willow Street (1009 South 1<sup>st</sup> Street).

### **FILE NO. CP13-037**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 18, 2013, an application (File No. CP13-037) was filed for a Conditional Use Permit for the purpose of renewing a previous Conditional Use Permit Amendment (File No.CPA02-001-01), for a public drinking establishment with late night use until 2:00 a.m., on that certain real property (hereinafter referred to as "subject property"), within the CP Commercial Pedestrian Zoning District, located on the southwest corner of South 1st Street and Willow Street (1009 South 1<sup>st</sup> Street) and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Club Caribe, 1009 South 1<sup>st</sup> Street, San Jose, CA 95113" dated March 4, 2013. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF  
THE CITY OF SAN JOSÉ:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located on the southwest corner of South 1st Street and Willow Street (1009 South 1<sup>st</sup> Street).
2. The applicant, Sandra G. Avanessian of Club Caribe, is requesting a renewal of a previously approved Conditional Use Permit Amendment (File No. CPA02-001-01) that allowed continued operation of a public drinking establishment, with late night use until 2:00 a.m., seven days a week.
3. The Conditional Use Permit Amendment (File No. CPA02-001-01) was requested to renew previously approved Conditional Use Permit (CP02-001) and was approved for a term of five years and set to expire on June 25, 2013.
4. On March 18, 2013, the applicant submitted a Conditional Use Permit application (renewal) to continue the existing drinking establishment and late night use.
5. The Club Caribe originally opened for business in 1986 and was granted a Conditional Use Permit (File No. CP86-007) for a public drinking establishment to operate between the hours of 12:00 midnight and 2:00 a.m.
6. Subsequent Conditional Use Permit renewals were approved for the subject establishment. (File No.s CP92-030, CP96-100, CP02-001, CPA02-001-01). A Negative Declaration was adopted for this project in November 1985.
7. The subject site has a designation of Mixed Use Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
8. The subject site is zoned CP Commercial Pedestrian.
9. A Conditional Use Permit is required for a drinking establishment and for late night use in the DC Downtown Primary Commercial Zoning District.
10. The subject establishment is an existing public drinking establishment and the applicant possesses a current and valid ABC Type 48 license.
11. The subject site is approximately 0.52 gross acre.
12. The applicant is not proposing any change in use, or any changes to the exterior façade of the building.
13. A mix of commercial office, public eating establishments, residential and retail uses surround the subject site.
14. The permitted hours of operation are from 6:00 a.m. to 2:00 a.m., seven days per week, with the current operation mostly occurring between the hours of 8:00 p.m. and 2:00 a.m.
15. The primary policies applicable for the review and analysis of this project are City Council Policy 6-27 for the Evaluation of 24-Hour Uses, and City Council Policy 6-23, Guidelines for the Evaluation of Nightclubs and Bars.

16. The Police Department is neutral to the renewal of the Conditional Use Permit.
17. The applicant must apply to the Police Department for and comply with an Entertainment Permit and any other requisite permits or licenses.
18. Council Policy 6-23 specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens.
19. The Resolution contains a condition that requires the operator of the proposed use to clean the public right-of-way within 200 feet of the subject site before 8:00 a.m. each day. In addition, the Resolution contains a condition that limits the operator of the proposed use to using mechanical equipment for outside maintenance only between the hours of 6:00 a.m. and 10:00 p.m.
20. Amplified sound would be allowed until 1:30 a.m.
21. The subject establishment includes 80 seats consistent with prior approvals.
22. The required number of parking spaces is 32.
23. The subject site was provided with 44 spaces. Additional landscape improvements by the subject establishment in 2010 resulted in a reduction of parking spaces to 30 spaces.
24. The subject establishment has had shared parking arrangement for 18 spaces with the adjoining parcel, also owned by the property owner of the subject parcel.
25. The Resolution contains a condition that requires the subject property owner to record a Covenant of Easement with the City of San Jose for ingress/egress and emergency vehicle access between the subject parcel and the abutting parcel immediately to the east of the subject parcel.
26. Notices of the Planning Commission public hearing, scheduled on July 10, 2013, for this project were sent to all property owners and occupants within 500 feet of the subject property.
27. Additional notices in Spanish for the Planning Commission public hearing, which was continued to August 14, 2013, was sent to all property owners and occupants within 500 feet of the subject property.
28. Under the provisions of Section 15301 (Existing Facilities) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that no expansion of the existing use is proposed.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan in that the most appropriate General Plan Land Use Designation for nightclubs and bars is a Commercial designation. The proposed project maintains an existing public drinking establishment and provides enhanced services to the surrounding neighborhoods.
2. The proposed project conforms to Council Policy 6-23 Guidelines for Evaluation of Nightclubs and Bars and Council Policy 6-27 Evaluation of 24-Hour Uses in that this project proposes continuation of an existing public drinking establishment with late night use.

3. The proposed project is in compliance with the California Environmental Quality Act in that no expansion of the existing use is proposed.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **CONDITIONS**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

3. **Fire Safety.** The permittee shall conform to all requirements of the Fire Department.
4. **Conditional Use Permit.** This Permit and listed conditions shall supersede the previously approved Conditional Use Permit Amendment File No. CPA02-001-01.
5. **Conformance with Plans.** Any development shall conform to the plans entitled, "Club Caribe, 1009 South 1<sup>st</sup> Street, San Jose, CA 95113" dated March 4, 2013, on file with the Department of Planning, Building and Code Enforcement.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Use Limitations.** Admittance to the establishment is restricted to patrons 21 years of age and older any time that the facility is operating as a public entertainment establishment as defined in Chapter 6.60 of Title 6 of the San Jose Municipal Code.
8. **ABC License:** The permittee shall obtain and maintain the appropriate license, based on the use of the facility from the State of California Department of Alcoholic Beverage Control (ABC) and shall maintain that license according to the use operated.
9. **Entertainment Permit.** The permittee shall obtain and maintain the appropriate Public Entertainment Permit, as applicable, from the City of San Jose Police Department.
10. **Additional Permits.** The permittee shall obtain all applicable permits required per the San José Municipal Code.
11. **Food Service.** Food service shall be available at all hours of operation.
12. **Alcohol Service.** Alcohol service shall comply at all times with the license issued by the Department of Alcohol and Beverage Control.
13. **Hours of Operation.** The drinking establishment shall be limited in operation from 6:00a.m. to 2:00a.m., daily. Live entertainment will be allowed until 1:30a.m. and shall cease thereafter.
14. **Security.** Permittee shall comply with, and ensure that the permittee's owners, managers and employees comply with the standards for internal and external security arrangements, including but not limited to provision of State licensed, uniformed security guards, required by Section 6.60.240 of Chapter 6.60 of Title 6 of the San Jose Municipal Code, as amended, during hours that the establishment is operating as a public entertainment establishment. A minimum of one security officer shall be on duty for every 50 patrons using the bar facility (during the hours of operation or while entertainment is being provided). The permittee shall maintain state licensed security approved by the Police Department to effectively control crime, gang, drug and other public safety problems that may arise.
15. **Loitering Prohibited.** Loitering by the patrons within a 500 foot radius of the doors of the premises is prohibited during hours of operation or after closure. The permittee shall proactively work to clear this area (500 foot radius of the doors of the premises) within half an hour of closure of their operation on all days of the week.

16. **Queuing.** The permittee shall use stanchions to contain the queuing line for its entire length. The queuing operation for the facility shall not disrupt pedestrian movements on the sidewalk, and shall allow for 8 feet of clear pedestrian movement at all times. The queuing operation shall utilize the frontage of the subject site before utilizing adjacent business frontage.
17. **Vendor Delivery Parking.** The permittee shall discourage vendors from parking delivery vehicle illegally on City streets and shall identify to vendors the available legal loading and unloading zones.
18. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
19. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
  - b. The permittee shall clean the public right-of-way within 200 feet of the subject site before 8:00 a.m. each day.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
  - d. The permittee shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
20. **Noise:** During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
21. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
22. **Lighting.** No new on-site lighting is approved through issuance of this Permit.
23. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
24. **Covenant of Easement.** The applicant shall record a Covenant of Easement with the City of San Jose for ingress/egress and emergency vehicle access between the subject parcel and the abutting parcel immediately to the east of the subject parcel within 60 days of the permit recordation.
25. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

**ADOPTED** and issued this 14<sup>th</sup> day of August 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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NORMAN KLINE  
Chairperson

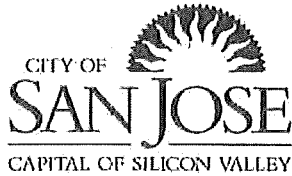
ATTEST:

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JOSEPH HORWEDEL  
Director of Planning, Building & Code Enforcement  
Planning Commission Secretary

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*



# Memorandum

**TO:** Aparna Ankola  
Planning Department

**FROM:** Ofc. Mike Epp #3048  
San Jose Police Vice Unit

**SUBJECT:** Club Caribe  
CP13-037  
1001 & 1009 S. 1<sup>st</sup> Street

**DATE:** June 20, 2013

---

Approved

Date

---

I have received your request for input regarding Club Caribe located at 1009 S. 1<sup>st</sup> Street, San Jose, Ca. 95113. Club Caribe uses the address 1001 S. 1<sup>st</sup> Street on their ABC License, Entertainment Permit and advertising. According to the Assessors Parcel Number 434-07-056 the address 1001 and 1009 are one in the same. Club Caribe is an existing night club that currently has a Type 48 On-Sale General ABC license to sell alcohol. They are seeking to renew their Conditional Use Permit.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is currently in the **Washington** Strong Neighborhood Initiative area.

Club Caribe is located in San Jose Police Beat S6. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1) and B&P Section 23958.4 (a)(2).

### Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
S6 (2012)	272	168	440	No
City Average	380	152	532	

Department of Alcohol Beverage Control (ABC) records indicate Club Caribe is in census tract 5031.13. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses to

population in census tract 5031.13 **does not** exceed the ratio of on-sale retail licenses and licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5031.13**

Census Tract	Authorized ABC Licenses as of May 2012		Current ABC Licenses as of June 19, 2013		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5031.13	6	2	5	4	No	Yes

The San Jose Police Department is **neutral** to the renewal of Club Caribe's Conditional Use Permit if the following conditions are added to the new CUP:

- **Hours of Operation:** The entertainment establishment shall be limited in operation from 0600am to 2:00am, daily. Live entertainment will be limited between the hours of 11:00am and 1:30am.
- **Security:** A minimum a one security officers shall be on duty for every 50 patrons using the bar facility (during the hours of operation or while entertainment is being provided.) The applicant shall maintain state licensed security approved by the Police Department to effectively control crime, gang, drug and other police problems that may arise.
- **ABC License:** The project operator shall obtain and maintain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverage Control (ABC) and shall maintain that license according to the use operated.
- **Entertainment Permit:** The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
- **Alcohol Service:** Alcohol service shall cease at 1:30 a.m. daily.
- **Entertainment:** Entertainment shall cease at 1:30 a.m. daily.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048  
Administrative Officer  
Special Investigations/Vice



Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechtman

Gerry Houdifon

August 1, 2013

Planning Commission  
City of San Jose  
San Jose City Hall  
200 East Santa Clara Street  
San Jose, CA 95113

**Re: Club Caribe's Application for Renewal of Conditional Use Permit**

**File No. CP13-037**

**Planning Commission Hearing: August 14, 2013**

Dear Chairman Kline and Honorable Members of the Planning Commission:

This law firm represents Ari Avanesian, the owner of La Cumbre Enterprises, d/b/a Club Caribe ("Club Caribe") and Sandra Avanesian who seek to renew the Club's conditional use permit.

Club Caribe, located on the corner of Willow and South First Streets, has had a long and successful history as an entertainment-night club. It is part of the Washington neighborhood and offers as entertainment live regional, Mexican music, and dancing. The building is an historic brick building from 1891.

In 1986, Ari Avanesian and his wife Sandra Avanesian, the owner of the real property, first applied for a conditional use permit for Club Caribe and were granted a conditional use permit for a public drinking establishment with late night hours until 2:00 a.m. The permit had a five-year renewal requirement and since 1986, every five years, the Avanesians have come before the City of San Jose to renew the



848 The Alameda  
San Jose, CA 95126  
ph. 408.293.4300  
fax. 408.293.4004  
www.amatteoni.com

Club's conditional use permit. The City has approved every renewal request. In 2008, the permit was unanimously approved by the Planning Commission.

Club Caribe is not proposing any changes in use or to the exterior facade of the building. The owner wishes to continue operating Club Caribe as he has successfully done for the past twenty-seven years.

The Avaneassians request that the Commission renew the Club's conditional use permit as Club Caribe is in compliance with its Conditional Use Permit (File No. CPA02-001-01), its Entertainment Permit and conforms to the General Plan's Mixed Use Commercial designation and related Council policies.

**1. Compliance with the City's General Plan and Goals and Policies**

The conditional use permit is consistent with the Envision San Jose 2040 General Plan's Mixed Use Commercial designation. As pointed out in the staff report (at page 4), for this designation the "... emphasis is on commercial activity as the primary use and residential activity allowed in a secondary role." Drinking establishments are intended uses under this designation. The Club also furthers key General Plan policy LU-4.1 "to retain existing commercial lands to provide jobs, goods, services, entertainment and other amenities for San Jose's workers, residents, and visitors."

**2. Compliance with its Conditional Use Permit and Entertainment Permit**

Club Caribe is in full compliance with its Conditional Use Permit.

There was some confusion at the previous Commission hearing as to what the existing conditional use permit required with regard to food service and whether Club Caribe was in compliance with this condition. There is no condition in the existing conditional use permit for providing food service. Mr. Avaneassian testified that on his own initiative he has been providing a Mexican buffet at certain hours of the evening, but it is not a permit requirement. In the proposed CUP there is a new condition, Condition 11, that states, "Food service shall be available at all hours of operation." Club Caribe will comply with new Condition 11.

Also, there was confusion on the Club's compliance with the *Anti-Litter* condition (No. 3) of the existing CUP. This condition states,

"Cleaning of the public right of way shall include the project frontage

and the public right of way within 200 feet of the project frontage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage."

The Club does daily cleaning and damp washing of the exterior and the surrounding area as required by this condition. This Anti Litter condition continues in the proposed CUP as Condition 18, which also states there shall be daily damp washing of all exterior walls and side walks along the Club's frontage. In addition to the daily damp washing, the Club does power wash as needed. The Club complies with the Anti Litter condition of its permit as the condition requires daily "damp washing," which the Club does.

The Club is also in compliance with its Entertainment Permit and there have been no complaints from the Police Department regarding the Club's operation. For that reason the Police Department is neutral to the renewal of the use permit.

### **3. A Neighbor's Opposition**

At the July 10 Commission hearing, Keith Bohren who owns a house at 1010 S. Second Street spoke in opposition to Club Caribe's renewal request. Mr. Bohren, who purchased his house in this primarily commercial neighborhood about fourteen months ago, voiced complaints at the Commission hearing concerning late night disturbances involving rowdy, drunk people, and the presence and noise from a *taco* truck along South First Street. He also complained about litter and street parking problems.

It is important to note that Code Enforcement has no record of any neighbor complaints against Club Caribe.

#### **a. Club Caribe Is Not The Cause of These Problems**

Mr. Bohren has singled out Club Caribe as the cause for the disturbances he complains of in the neighborhood, but there was nothing introduced to support his claim. In contrast, as pointed out by staff, South First Street is a major transportation and commercial corridor. The Washington neighborhood is a vibrant one and it is close to the City of San Jose's downtown entertainment district. On Friday and Saturday nights, in the late night hours, numerous people are traveling up and down South First Street, and in and around this neighborhood, going to and from various clubs, parties and venues.

In its twenty-seven years in business, Club Caribe has been a model nightclub. Club Caribe has not faced a single code enforcement action regarding its Conditional Use Permit or for violating its Entertainment Permit. In fact, Club Caribe has not had any disciplinary actions filed against it by the City of San Jose, its Police and Fire Departments, the Santa Clara County Department of Health, and California Alcohol Beverage Control Board. Club Caribe's record shows it is not a disruptive force in the neighborhood. At the Commission hearing, the residents living closest to the Club, in the apartment building adjoining the Club's parking lot, came out to support the Club's renewal request and to say its operation was not a problem for them. The Washington Area Community Coalition voted unanimously to approve the renewal of the Club's permit in 2008.

b. The Taco Truck Is Not Part of This Application

Mr. Bohren particularly complained about the noise caused by a *taco* truck which parks along South First Street and caters to the late night, club and party customers. The noise is from these customers and the *taco* truck's generator.

Club Caribe has no affiliation with this *taco* truck or any food truck. Thus, the Avaneassians have no ability to control or regulate this *taco* truck or any food truck operating in the public right of way. It is the responsibility of the City of San Jose to regulate food trucks' hours, operations, use of generators, and location. In our inquiry of the Permit Division of the City of San Jose Police Department, there was no record of a complaint being lodged with the Division regarding a food truck operating on South First Street.

The presence and operation of the *taco* truck along South First Street should not be considered by the Commission in evaluating the merits of Club Caribe's renewal request.

**4. Neighborhood Support**

Club Caribe could not have successfully operated in the Washington neighborhood for the past twenty-seven years without neighborhood and community support. Attached are petitions from the surrounding merchants and neighbors in support of Club Caribe's continued presence in the Washington neighborhood.

In addition, in response to the Commission's inquiry of Mr. Avaneassian's experience in operating a nightclub and entertainment venue, attached are reference letters concerning Mr. Avaneassian's entertainment-business experience from Team San

Jose, Santa Clara County Fairgrounds Management Corporation, KRTY Ltd. and Empire Broadcasting, and KRZZ 93.3 FM. Team San Jose, the operator of the San Jose Convention Center speaks to La Cumbre's commitment to professional event management and strict code of ethics in its successful promotion and presentation of large dances at the Convention Center over the last 20 years.

The Avaneassians respectfully request that the Commission adopt staff's recommendation for approval of the renewal of Club Caribe's conditional use permit.

Sincerely,



PEGGY M. O'LAUGHLIN  
Attorney for Club Caribe

PMO/jm

Attachments

cc: Ari and Sandra Avaneassian  
Councilmember Sam Liccardo

## **ATTACHMENTS**

1. Reference Letters for La Cumbre Enterprises
2. Petition of Merchants in Support of Club Caribe
3. Petition of Neighbors in Support of Club Caribe



July 22, 2013

La Cumbre Enterprises, Inc.  
1001 South First Street  
San Jose, CA 95110

Attention: Ari Avanesian

La Cumbre Enterprises, Inc. has contacted us to provide a reference as an entertainment organization in San Jose.

La Cumbre has presented large public dances at the San Jose McEnery Convention Center for more than 20 years. La Cumbre demonstrates a commitment to professional event management and adheres to a strict code of ethics.

The La Cumbre team is great to work with and we look forward to a long partnership of event hosting at the San Jose McEnery Convention Center.

Regards,

Diana Ponton

Team San Jose  
Vice President, Sales and Marketing

F

July 23, 2013

La Cumbre Enterprises Inc.  
1025 S. First St.  
San Jose, CA 95110

I am happy to provide a reference for La Cumbre Enterprises, Inc. Their history of holding successful events at the Santa Clara County Fairgrounds goes back more than two decades. I've been the Events Coordinator here for over 15 years and worked with their organization on multiple events. From start of their event to details and logistics, I've known their organization and staff to be respectable and dependable.

They are a client with great integrity for doing business with honesty and finalizing all payments on time. The events, La Cumbre Enterprises has promoted here, like, El Tri Concert, on March 29, 2013, are considered as some of the most memorable experiences of the Santa Clara County.

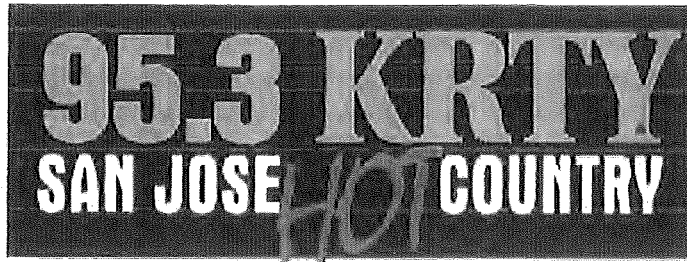
Sincerely,



Rachel Ortiz  
Sr. Events Coordinator



[www.thefair.org](http://www.thefair.org)



July 24, 2013

To Whom It May Concern:

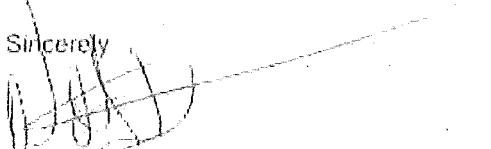
KRTY Ltd and Empire Broadcasting have been working with Club Rodeo and La Cumbre Enterprises for the past 8 years. During that time we have built a great working relationship with Ari Avanessian and his associate, Javier Macias.

During that time we have built a partnership that has brought great popularity to Country Music in the south bay. We have co-promoted over 200 concerts that have brought great awareness of newer artists in the format. Because of our partnership and cooperation, these shows have been made very affordable and open to all.

One of our biggest community awareness campaigns is the annual Breast Cancer Benefit night, where the club donates all the door proceeds, all labor costs and all food to the members of our AVON Breast Cancer Walk Team. This annually has resulted in over \$10,000 in donations.

In radio and club business it is very rare to find a partnership like we have with them. Ari and Javier have been great to work with over the past 8 years and as such we have built a great following of country fans in San Jose.

Sincerely



Nate Deaton

KRTY General Manager



July 24, 2013

Re: La Cumbre Enterprises

To Whom This May Concern:

My name is Olga Rosales, Account Executive, for KRZZ 93.3 FM 'La Raza'. I am writing to you because I have had the pleasure of working with La Cumbre Enterprises, as both a Traffic Manager and as an Account Executive since the onset of KRZZ 93.3 FM in 2004. In both titles, I can attest to the upmost professionalism of La Cumbre's staff, the artist's that they bring in, and the partners that they use for media production and imaging.

The partnership that La Cumbre has had with 93.3 FM La Raza since 2004, is bar-none one of mutual interest, respect and friendship. We have partnered in concert production, with artists, and with venues to promote the largest events in the Bay Area, garnering interest from over 1.3 million Hispanics that reside in the Bay, including San Jose.

As the radio station went from a 'start-up' in 2004, La Cumbre was paramount to our success in becoming the number one Hispanic Radio Station in the Bay. Also, in our partnership, we have seen La Cumbre succeed and grow as a concert production powerhouse. Along with La Cumbre Enterprise, Club Rodeo and Club Caribe, are two landmark nightclubs in the heart of San Jose where artists want to perform and where people want to be seen.

KRZZ - 93.3 FM SAN FRANCISCO/SAN JOSE  
1420 KOLL CIRCLE • SAN JOSE, CA • 95112  
TEL: (408) 546-4000 • FAX: (408) 546-4041  
WWW.YOSOYRAZA.COM



I would recommend their venues, I would recommend them as promoters, and I would also recommend them to my friends and family.

Thank you for your time in reading this. Please feel free to contact me at the information below should you need any further information.

Best Regards,

Olga Rosales, Account Executive, KRZZ 93.3 FM La Raza  
Cell: 415-602-4795 Direct Line: 408-546-4024  
[orosales@sbssanfrancisco.com](mailto:orosales@sbssanfrancisco.com)

CC: George Anne Garcia-Arana, Local - National Sales Manager, San Francisco  
CC: Christian De La Cruz, Local & Digital Sales Manager, SBS  
CC: Eric Osuna, VP Sales, San Francisco/Los Angeles

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Juy 22, 2013

We, Neighbors of the area of Willow Street and South 1st. Street endorse to grant continuance of Club Caribe's Conditional Use Permit.

## NEIGHBORS

Nosotros Vecinos del area de Willow Street y South 1st Street, le damos nuestro apoyo incondicional al establecimiento Club Caribe para continuar operando en la direccion de 1001 South 1st. Street

Address / Direccion	Name / Nombre	Signature / Firma
30 Willow #1	Ramona Gonzalez	Ramona Gonzalez
30 Willow #1	Cesar Gonzalez	Cesar Gonzalez
30 Willow #1	Antonia Gutierrez	Antonia Gutierrez
23 Willow St	JUAN GARCIA	Juan Garcia
Truena Zeledon	23 Willow St	Truena Zeledon
TRANSITO N	230 Willow St	
Josepua Gomez	34. Willow St Apt #7	J.G.A.
30 Willow STAPT#6	Brenda Roldan G.	Brenda K. Roldan
MARTHA RUIZ	47 W, Willow St.	Martha Ruiz
3584 BUCKEYEDR	Graciela Alvarado	Graciela Alvarado
49 W, Willow St.	Jaime Gonzalez	Jaime Gonzalez
231 Willow St	Jesús	Jesús
34 Willow #1	TEMU ARELLANO	TEMU ARELLANO
30 Willow #6	Edgar Ruelas	Edgar Ruelas
30 Willow #10	Jose Madrigal	Jose Madrigal
155 Lick Ave	OMAR TORRES	OMAR TORRES
755 PALM ST	Elfrain B	Elfrain B
30 Willow St #7	Margarita R.	Margarita R.

July 22, 2013

We, Neighbors of the area of Willow Street and South 1st. Street endorse to grant continuance of Club Caribe's Conditional Use Permit.

Nosotros Vecinos del area de Willow Street y South 1st Street, le damos nuestro apoyo incondicional al establecimiento Club Caribe para continuar operando en la direccion de 1001 South 1st . Street



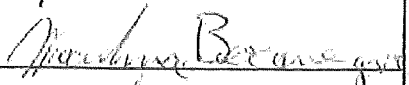

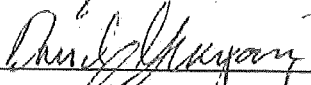



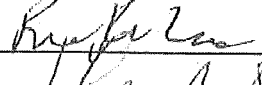

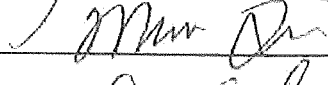
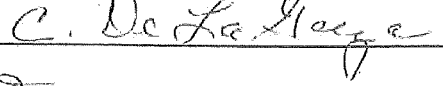
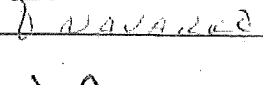





[illegible]

July 22, 2013

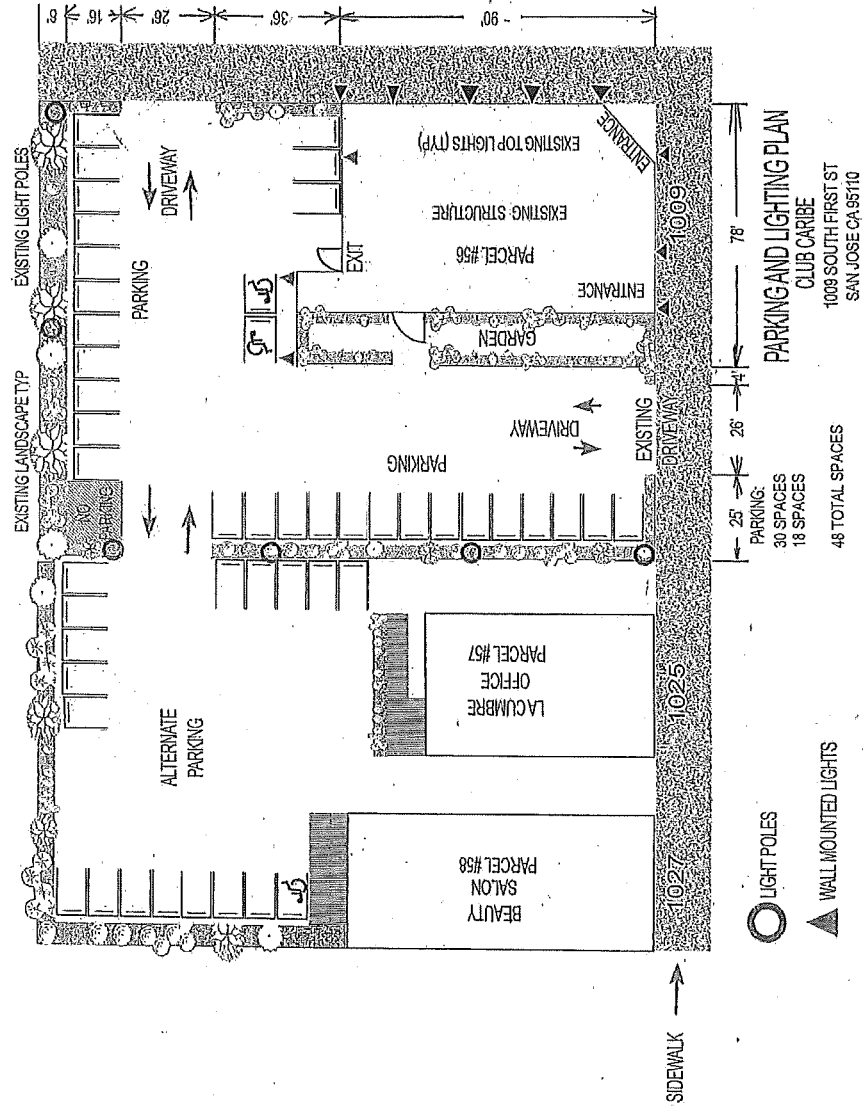
We, Merchants of Willow Street and South 1st. Street endorse to grant continuance of Club Caribe's Conditional Use Permit.

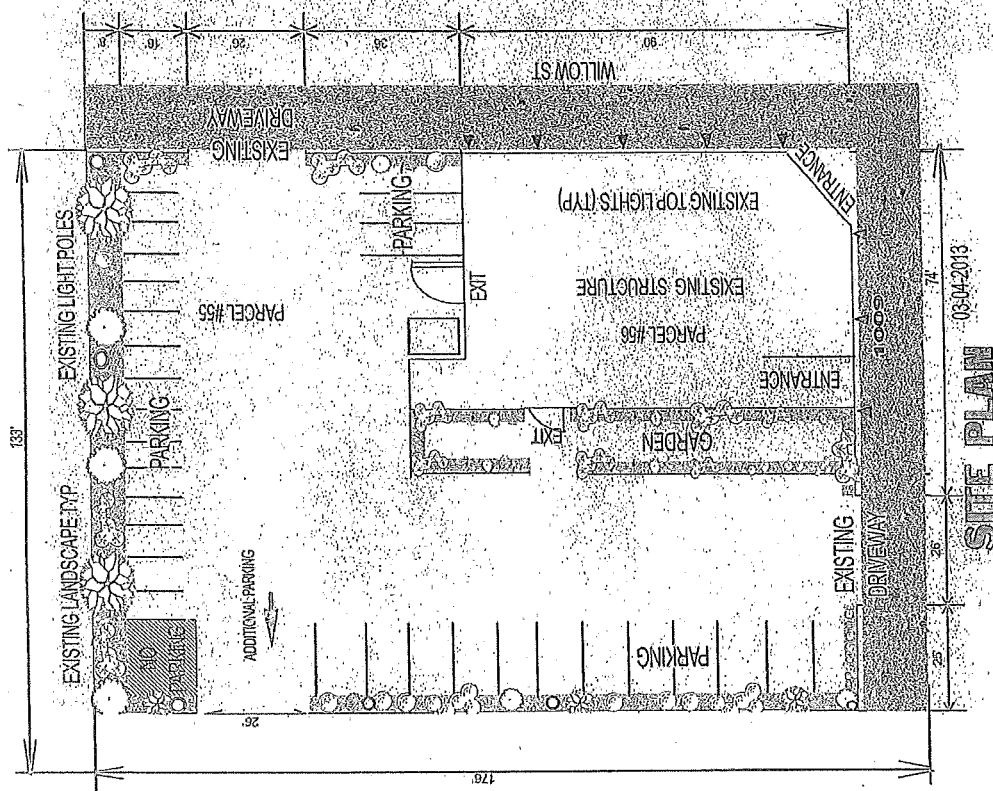
# MERCHANTS

Nosotros los Comerciantes del area de Willow Street y South 1st Street, le damos nuestro apoyo incondicional al establecimiento Club Caribe para continuar operando en la direccion de 1001 South 1st. Street

Address / Direccion	Name / Nombre	Signature / Firma
1027 S 1st St. SJ	VALERIA CAMARHO	
1165 S 1st St.	JUAN L. VILLEGAS	
30 WILLOW #4	MARTINA BOCAINEGA	
30 WILLOW #4	MARTIN BOCAINEGA	
163 Willow St	DAVID GONZALEZ	
215 WILLOW St	ESCARLO LOPEZ	
239 Willow St	Noemi Fuentes	
281 WILLOW St	Marisol Alvarez	
310 Willow St	Rupert R.	
308 Willow St	Helena Alvarez	
302 Willow St	Mario Quetzal	
278 Willow St	C. De La Haza	
280 Willow St	TRANSITO NAVARRO	
270 Willow St	Guadalupe Murillo	
226 Willow St	Felix Amador	
1056 S. First St	GABRIEL CASTELLANOS	
960 S 1st St	Dorotea Oropeza	
999 S 1st St	ANGEL GONZALEZ	







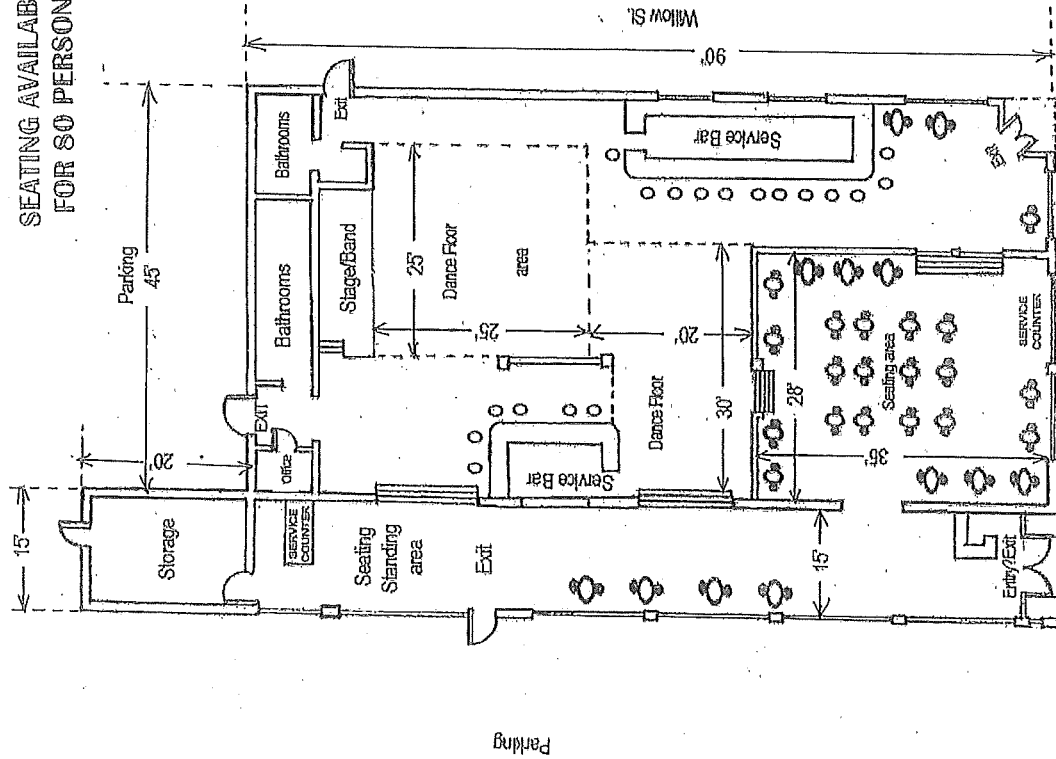
CLUB CARIBE  
1009 SOUTH 1ST ST  
SAN JOSE, CA

03-04-2013

# CLASH

280-8141

SEATING AVAILABLE  
FOR 80 PERSONS



CLUB CARIBE  
1009 South 1st St

60'  
S. First St

Calls for Service (Prl 1-6) at 1001 S 1st St  
Time Period: 07.09.2012 - 07.09.2013

EVENT TYPE	EVENT TYPE DESCRIPTION	Total
415	DISTURBANCE	2
20002	MISDEMEANOR HIT AND RUN	2
242EMS	BATTERY (COMBINED EVENT)	2
242	BATTERY	1
273.5	DOMESTIC VIOLENCE	1
10851	STOLEN VEHICLE	1
415WEMS	DISTURBANCE, WEAPON (COMBINED EVENT)	1
Grand Total		10